

REMARKS

Claim Rejections

Claims 1, 2, and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art in view of Lenzing et al.

Amendments to Specification

Applicant has amended the Specification as noted above to provide proper antecedent basis in the specification for the orientation of the two plates, which are shown in Figure 2 as originally filed with this application. No "new matter" has been added to the original disclosure by the foregoing amendments to the Specification.

Claim Amendments

By this Amendment, Applicant has amended claims 1, 5, and 7 of this application. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The primary reference to Applicant's Admitted Prior Art teaches a mesh element assembly having a mesh (protective screen 15) used for conveying the flow, whereas the mesh (the reticular structure 42) in the present invention is used for attaching the plasma particles and enhancing the buffer function of the plate (41).

Applicant's Admitted Prior Art does not teach at least one plate for blocking a plasma of the chamber from directly striking against a sensor, disposed substantially vertically at an inner wall of the vacuum tube; nor does Applicant's Admitted Prior Art teach the plasma particles flowing from the chamber through the vacuum tube are firstly deposited and attached onto the plate and will not directly impact the sensor of the gauge.

The secondary reference to Lenzing et al. teaches a device (1) for measuring the air intake mass flow of an internal combustion. A protective screen (15) and a longitudinal rib (39) are set for protecting the measuring body (19). The protective screen (15) is shaped as a wire mesh or a plate-shaped grating and made of plastic

or sheet metal. The function of the protective screen (15) is that dirt particles or fluid droplets pass through the protective screen (15) may conveyed toward an inner wall (17). The longitudinal rib (39) extending in the direction of the center line, which is directly downstream of the protective screen (15), are distributed over the circumference of the tubular body (8) as means 40 for reducing eddies (87) and uncontrollable accumulations. Herein the eddies (87) and uncontrollable accumulations are arising in a protected region (59), which can fill up with fluid due by the floe conveyed by the protective screen (15).

Lenzing et al. do not teach how to solve the problem existed that the plasma particles strike against the sensor. The protective screen (15) is used for conveying the direction of the flow (comprising dirt particles), and the longitudinal rib (39) is used for reducing eddies (87). The gauge of the present invention is quite different from the tubular body (8) in the reference, plasma particles inside the gauge are high-energy and hurtful to the sensor (22), but the dirt particles in the reference only may affect the accuracy of the measuring body (19).

The gauge damper of the present invention and Lenzing et al. are totally different in function, definition, and component parts. The plate (41) is disposed substantially vertically at an inner wall of the vacuum tube, herein the plate (41) is used to adhere high-energy plasma particles and reduce the power affect of the sensor (22).

In the abstract, the longitudinal rib (39) in Lenzing et al. extends in the direction of the center line for reducing eddies (87), the longitudinal rib (39) is not positioned substantial vertically at the inner wall to adhere the dirt particles of the incoming flow but extending parallel around the inner wall of the tubular body (8).

Furthermore, the plate (41) in the present invention may be disassembled from the vacuum tube (4) for cleaning the plasma particles adhere thereon. This disassembled process could save cost of replacing a new sensor (22), which costs about \$35,000.

Neither Lenzing nor AAPA disclose the plate (41) between the sensor and the incoming flow as showed in FIG. 2 of the present invention.

Even if the teachings of Applicant's Admitted Prior Art and Lenzing et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: at least one plate for blocking a plasma of the chamber from directly striking against a sensor, disposed substantially vertically at an inner wall of the vacuum tube; nor does the combination suggest the plasma particles flowing from the chamber through the vacuum tube are firstly deposited and attached onto the plate and will not directly impact the sensor of the gauge.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Applicant's Admitted Prior Art or Lenzing et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Applicant's Admitted Prior Art nor Lenzing et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

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Summary

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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